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UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Lewis F. Powell, Jr. United States Courthouse Annex  
1100 E. Main Street, Suite 501  
Richmond, Virginia 23219-3517

Patricia S. Connor  
Clerk

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October 27, 2006

TO: Dontez Lamont Simuel  
James Philip Allen, Esq.

Enclosed is a copy of the Court's decision in

Case Number(s): 06-6981

PATRICIA S. CONNOR  
CLERK

Enclosure(s)

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 06-6981

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DONTEZ LAMONT SIMUEL,

Plaintiff - Appellant,

versus

PAULA SMITH; REGGIE WEISNER; WHITNER; MATT  
CLARK; NIMAN; VALERIE CARSWELL; BELL; HATTIE  
PIMPONG; MITCH JOHNSON,

Defendants - Appellees.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Statesville. Graham C. Mullen,  
Senior District Judge. (5:04-cv-00182)

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Submitted: October 18, 2006

Decided: October 27, 2006

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Before NIEMEYER, GREGORY, and SHEDD, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Dontez Lamont Simuel, Appellant Pro Se. James Philip Allen, NORTH  
CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for  
Appellees.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Dontez Lamont Simuel seeks to appeal the district court's order granting Appellees summary judgment and dismissing his 42 U.S.C. § 1983 (2000) action. The district court's judgment was entered on the docket on April 5, 2006. Simuel's notice of appeal was not received by the district court until May 19, 2006. According Simuel the benefit of Fed. R. App. P. 4(c) and Houston v. Lack, 487 U.S. 266 (1988), the earliest date his notice of appeal may be deemed filed is May 16, 2006.

Although Simuel's notice of appeal was filed beyond the 30-day window for filing a timely notice of appeal, the "declaration" Simuel enclosed with his notice states that he initially mailed his notice within the prescribed time period, but had it returned to him in an envelope marked "address unknown." This declaration, which was submitted within thirty days of the expiration of the appeal period, may be properly construed as a motion for an extension of time in which to note an appeal under Fed. R. App. P. 4(a)(5).

Accordingly, we remand the case to the district court for the limited purpose of determining whether Simuel can satisfy the requirements for an extension of the appeal period under Rule 4(a)(5). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED